



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Rule 109 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, as amended (“the Regulations”)

Chamber Ref: FTS/HPC/EV/23/4357

Re: Property at 1 Robert Lindsay Place, Arbroath, DD11 4JR (“the Property”)

Parties:

Mr James Duncan, 8 Shepherd Lane, Arbroath, DD11 4HZ (“the Applicant”)

Mr Andrew Mulholland, Mrs Brogan Mulholland, 1 Robert Lindsay Place, Arbroath, DD11 4JR (“the Respondent”)

Tribunal Members:

Nicola Weir (Legal Member) and Gerard Darroch (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for recovery of possession of the property be granted.

Background

1. The application submitted on 6 December 2023 sought an eviction order against the Respondent on the ground that a family member of the landlord intends to live in the Property under Ground 5 of the Private Housing (Tenancies)(Scotland) Act 2016 (“the 2016 Act”). Some supporting documentation was submitted in respect of the application, including a copy of the tenancy agreement and Notice to Leave. The Private Residential Tenancy commenced on 10 May 2023 and Notice to Leave was served on 6 November 2023.
2. Following initial procedure and the lodging of further supporting documentation by the Applicant, on 14 February 2024, a Legal Member of the Tribunal with

delegated powers from the Chamber President issued a Notice of Acceptance of Application in terms of Rule 9 of the Regulations.

- 3 Notification of the application and details of the CMD fixed for 7 June 2024 was served on the Respondent by way of Sheriff Officer on 2 May 2024. In terms of said notification, the Respondent was requested to lodge any written representations by 22 May 2024. No written representations were lodged by that date but on 6 June 2024, the day before the scheduled CMD, the Respondent (Mr Mulholland) submitted a postponement request on the grounds of ill-health and stated that he wished to fully defend the eviction. A postponement was granted by the Tribunal (different Legal Member) and a fresh CMD scheduled for 19 September 2024. A Direction was also issued to parties at that time, requesting the Applicant to lodge some further documentation, clarifying the position with the title to the Property and the ground of eviction relied upon and the Respondent to lodge written representations confirming their position in relation to the application.
- 4 In response to the Direction, the Applicant's representative lodged a copy of the title deeds and an explanation regarding the other matters queried. They explained the background to the title and mortgage being put into the joint names of the Applicant and his son, Mr Andrew Gunning, although the Applicant had understood at the time of the application that it was only the mortgage that was in joint names. Mr Gunning is accordingly joint owner of the Property, but not joint landlord (as the tenancy names the landlord as the Applicant only). Mr Gunning is the member of the Applicant's family who is wishing to reside in the Property.
- 5 The Respondent did not lodge anything in response to the Direction.

Case Management Discussion – 19 September 2024

6. The Case Management Discussion ("CMD") took place by telephone conference call on 19 September 2024 and was attended by the Applicant's representative, Mrs Charlotte McPherson, of Wardhaugh Property, on behalf of the Applicant and by Mr Andrew Mulholland, Respondent on behalf of both Respondents. The Applicant is seeking an eviction order on the basis that his son, Mr Gunning, and his partner are wishing to reside in the Property due to issues including damp affecting their own rental property and overcrowding and other issues concerning the Applicant's own property, where Mr Gunning and his partner are staying some of the time due to the condition of their own property. There are also now rent arrears owing by the Respondent amounting to £15,500 as the Respondent had stopped paying rent altogether when notice was served. The Respondent's position was that they do not consider the eviction ground being relied on by the Applicant to be genuine and consider that the real reason notice was served was due to the Respondent having some difficulties, resulting in some rent arrears accruing. Mr Mulholland explained the reasons for the initial rent arrears and their difficulties dealing with the Applicant's letting agent. They wish to sort out the rent arrears and have put some rent money aside, although Mr Mulholland also conceded that they have

been saving for a deposit, etc should they require to obtain an alternative private let. Mr Mulholland provided some further information regarding their personal, family and employment circumstances and indicated an intention to seek some advice in the matter. As there were issues in dispute, the Tribunal continued the application to an Evidential Hearing, subsequently fixed for 21 January 2025, details of which were notified to parties on 5 December 2024. Following the CMD, parties were issued with a CMD Note outlining the discussions at the CMD and a Direction to parties to lodge certain documentation in advance of the Evidential Hearing which was as follows:-

*“The **Applicant** and **Respondent** are required to provide:-*

- 1. An inventory or list of any documentation/further documentation upon which the parties wish to rely at the Evidential Hearing in support of their respective positions as to the eviction ground being relied upon by the Applicant (Ground 5 – family member intends to live in the Property) and also the reasonableness (or otherwise) of the Tribunal granting an eviction order in the particular circumstances of this case; said documentation to include photographs or other evidence concerning the condition of the family member’s own rented property and evidence/communications between the parties establishing the timeline of events around the rent arising and Notice to Leave being served*
- 2. A list of any witnesses that the parties wish to call to give evidence at the Evidential Hearing to be fixed in respect of this application, and to make arrangements for the attendance at the Hearing of any such witnesses.*

*The documentation referred to above should be lodged with the Tribunal Administration no later than **14 days** prior to the Evidential Hearing to be fixed in respect of this application.”*

7. On 16 October 2024, in response to the Tribunal’s Direction, the Applicant’s representative lodged by email written submissions and further documentation in support of the Applicant’s position including details of witnesses for the Applicant for the Evidential Hearing; proof of the updated rent arrears of £16,750 owing as at 15 October 2024; a copy of a fresh Notice to Leave issued to the Respondent on 15 October 2024 in respect of the rent arrears; letters from the Applicant and witnesses containing further supporting background information; photographs and video clips said to show the condition of Mr Gunning and his partner’s flat; information regarding damp readings; a copy of the tenancy agreement in respect of that flat in the name of Mr Gunning’s partner, Ms Cochrane, which commenced on 9 May 2022; photographs said to show rubbish build-up and deterioration of the exterior of the Property; and title information concerning the Property showing the title and mortgage in the joint names of the Applicant and Mr Gunning from 31 March 2023. This documentation was circulated by the Tribunal to the Respondent and the Tribunal Members.
8. On 3 January 2025, a further email was received from the Applicant’s new representative, Mr McTigue of Jackson Boyd Lawyers attaching a mandate

from the Applicant authorising him to act; updated witness details for the Applicant; proof of the updated rent arrears now amounting to £19,250; and further details of what the photographs and video clips previously lodged show. This documentation was circulated by the Tribunal to the Respondent, the Applicant's previous representative, and the Tribunal Members.

9. On 16 January 2025, Mr McTigue emailed again to confirm that the Applicant himself also be in attendance at the Evidential Hearing.
10. The Respondent did not respond to or comply with the Tribunal's Direction prior to the Evidential Hearing.
11. On 20 January 2025 (the day before the Evidential Hearing), the Respondent, Mr Mulholland, emailed the Tribunal seeking a postponement of the Evidential Hearing, stating that he was going into hospital for an operation on the date of the Evidential Hearing and would like to explain his case further. This postponement request was circulated and considered by the Tribunal Members on the afternoon of 20 January 2025. The Tribunal requested to see proof in support of the request, failing which the Evidential Hearing would proceed as scheduled. The Tribunal Administration notified parties of the Tribunal's position on the postponement request by email on the morning of the Evidential Hearing, at 7.49am. A delivery receipt was received from the Respondent's email provider.
12. No further communication was received from the Respondent prior to the Evidential Hearing.

Evidential Hearing

13. The Evidential Hearing took place by telephone conference call on 21 January 2024. It was due to commence at 10am. However, the Tribunal delayed the start of the hearing by over 5 minutes to allow the Respondent an opportunity to join late but they did not do so. The Applicant, Mr James Duncan, was in attendance, supported by his wife, Mrs June Gunning and was represented by Mr Tony McTigue, Trainee Solicitor, of Jackson Boyd Lawyers.
14. Following introductions and introductory comments, there was discussion regarding the Respondent's postponement request and the timing of this. Mr McTigue confirmed that the Applicant was opposed to a postponement as there is a pressing need to recover the Property for his son to live in and also because the rent arrears are extremely high and still increasing. There has been no contact from the Respondent meantime and no attempt to pay anything towards the arrears, despite what had been said by the Respondent at the CMD. The Applicant accordingly wished to move for an eviction order to be granted today. It was noted that, apart from the Applicant himself, his son, Mr Gunning and his partner, Ms Cochrane, were both available as witnesses to give evidence today.

15. The Legal Member confirmed that no supporting information had been submitted by the Respondent in relation to his postponement request and, in the absence of this, the Tribunal was not prepared to consider granting the postponement request, particularly given the last minute nature of the request. The Tribunal noted that no explanation for the timing of the postponement request had been provided by the Respondent, despite the Respondent having been notified of the date of the Evidential Hearing on 5 December 2024; and that nothing had been lodged by the Respondent in support of their position in response to the Tribunal's Direction dated 19 September 2024 issued following the CMD at which Mr Mulholland had been personally present.

16. It was confirmed that the Evidential Hearing would accordingly proceed but that the Tribunal Clerk would continue to monitor the situation in case any emails or other communication was made by the Respondent during the hearing or if the Respondent sought to join the conference call late. The hearing thereafter proceeded and concluded, there being no contact made by the Respondent during the hearing. Mr McTigue took Mr Duncan, Mr Gunning and Ms Cochrane through their evidence in turn. Both Mr Gunning and Ms Cochrane were only party to the telephone-conference call during their own individual evidence. Reference was made throughout to the supporting documentation lodged. The Tribunal Members also asked Mr Duncan and his witnesses a number of questions and Mr McTigue was thereafter given an opportunity to ask them each any further questions in re-examination.

17. Evidence of Applicant – Mr James Duncan

Mr James Duncan confirmed that his address is still as stated in the Tribunal papers. He is now retired and has been landlord for around three years, although he does not own any other properties that he lets out. His reason for wishing to evict his tenants is that he wants his son and his girlfriend to be able to move into the Property. He wants to help them because they are having problems with dampness and things where they are living. Mr Duncan explained that the Property was originally purchased with a view to family living there and also as an investment for his retirement. He became a little upset, stating that he has dyslexia and finds it difficult to find the correct words to say. Mr McTigue, with the permission of the Tribunal, then read out the letter from Mr Duncan, lodged with the Tribunal, dated 5 June 2024 which states as follows:-

“With ref to our property at: 1 Robert Lindsay Place, Arbroath. DD11 4JR

Since I first applied to regain our property things have worsened over the last 6 months to a point that we are all suffering as we pass the property daily and see that the place has become unkempt and indeed multiple black bags of waste have been building up the back garden which I believe was reported by neighbours as the smell over the fence is unbearable.

As previously stated this is a genuine application as we desperately require our property back to accommodate my son Andrew Gunning (Known by my wife's

maiden name). I have since sent over photographs of the damp and cold accommodation of the flat they currently rent.

Andrew and Shannon are living between the damp flat and our home as my son has Asthma which is made worse living in this damp. Shannon also has health problems which we believe are not helped by their living conditions. When they are living in our home, it is very overcrowded as we are all trying to work for home, which is the cause of many rows.

We bought this property initially to help fund our retirement but are now also in severe financial difficulty and are going to run into debt as the tenants have not paid any rent for a substantial period of time. Indeed my wife has taken on some extra part-time work to cover the mortgage costs. Our outgoings for this property are around £700 per month for mortgage, insurances etc. we are having to cover this over a prolonged period of time as well as living in overcrowded accommodation and worrying about the health of my son and his partner when they go back to the flat to give us a break is causing us all to suffer a great deal of stress and anxiety to say the least.

As I have said previously the property and tenancy agreement are in my sole name but obviously this does affect our entire family.”

Mr Duncan confirmed that this letter was from him and that he is the signatory of the letter. He stated that his son and his girlfriend stay with Mr Duncan and his wife around three times per week. Mr Duncan and his wife are experiencing financial difficulties as their tenants have not paid rent since November 2023 and the arrears are now more than £19,000. Mr Duncan insisted that his intentions with the Property, to have his son living there, are genuine and that, contrary to what Mr Mulholland had said at the CMD, the notice being served on his tenants originally was nothing to do with rent arrears which were not really an issue at that time. Mr Duncan confirmed that the Respondent had been their tenant for less than six months when notice was served in November 2023. When he had entered into the tenancy with the Respondent in May 2023, it was not anticipated that Mr Duncan's son would need the Property to live in soon. At that point, his son's relationship with his girlfriend was fairly new and they were staying at her flat together. Mr Duncan does not know when the damp problems first arose at the flat but, in May 2023, when he entered into the tenancy with the Respondent, he had no reason to think that his son's arrangements with the other tenancy would not continue. It was thought initially that the landlord there would attend to the dampness issues but this unfortunately turned out not to be the case. Mr Duncan confirmed that the flat belongs to his son's girlfriend, Ms Cochrane, and that she had the flat before his son moved in. He does not recall exactly when they first told him about the damp problem but confirmed it was some time ago and could have been before Mr Duncan let this Property to the Respondent. Mr Duncan reiterated that his son and girlfriend had initially reported the damp to her landlord and had thought that the issue would be resolved. Mr Duncan stated that his son and his girlfriend stay with Mr Duncan and his wife around three times per week, due to the condition of their flat and concerns regarding their health as a result. Mr Duncan's property has three bedrooms but it is difficult when his son and

his girlfriend are staying there because both they and his wife work from home. Mr Duncan is retired but stated that his house does not really feel like his house any more. They all find the situation stressful and this is why his son and girlfriend keep on their flat, as they return there regularly to give them all a bit of respite. Mr Duncan confirmed that it is the intention that his son and his girlfriend will give up their flat and move in as soon as this Property is recovered and also that they will pay rent to Mr Duncan to help financially with his retirement.

18. Evidence of Applicant's witness - Mr Andrew Michael Gunning

Mr Gunning confirmed his address as both Applicant's address and also 22 Jamieson Street, Arbroath. He is a project engineer and works at home two to three times per week on average, but sometimes four. He does project design work, involving a lot of paperwork and needs a bit of space when he is working at home. He confirmed that Mr Duncan is his step-dad, since he was about three years old. Mr Gunning confirmed that he and his girlfriend are going to move into the property once the eviction is granted. This is to provide them with more suitable accommodation and so that they can progress their relationship. They have been together for almost three years now and plan to get married and have kids and pets for which they will need a family home. Mr McTigue referred Mr Gunning to the letter submitted to the Tribunal dated 29 October 2024, which Mr Gunning confirmed was from him and his girlfriend, Shannon Cochrane and that he was a signatory to it. He confirmed that this was their permission to lodge with the Tribunal the photographs and video-clips they had taken of their flat, together with the timeline of events they had prepared and a copy of Ms Cochrane's tenancy agreement. Mr Gunning confirmed they had also provided a moisture gauge conversion table to assist in explaining the damp meter readings shown in the photographs and videos.

Mr Gunning was asked by Mr McTigue to describe his current living conditions. He stated that he has asthma and that this is made worse by the damp and cold in the flat. They are worried that the conditions are also affecting his girlfriend's health, particularly the presence of mould, caused by the damp. He definitely thinks his asthma is getting worse, especially when the weather is really cold. They have bought de-humidifiers for the flat but they do not make much difference and the damp stains on the walls are getting bigger. Mr Gunning confirmed that it was his intention when the tenants remove from the Property to make a home there for he and his girlfriend. He does not yet know the condition of the Property inside but thinks that they would probably move in as soon as possible, to get out of the damp flat, while they are doing it up.

Mr Gunning confirmed that they had looked for alternative places to live but that these were not affordable, particularly as he has been having to help his parents out financially. They still have a mortgage to pay in relation to the Property and are really struggling due to the length of time the rent has not been paid by their tenants and the high rent arrears owing. Mr Gunning estimates that he is currently helping his parents by contributing about £300 per month towards their finances. In addition, Mr Gunning has incurred extra costs himself in constantly driving back and forth between the two houses. He finds this difficult as his

parents should be properly retiring by now and they all want to be able to move forward with their lives. Apart from the damp and cold in their flat, it is also very cramped. Due to the conditions at the flat, Mr Gunning confirmed that they go back and stay with his parents two to three times per week. This involves a lot of stress regarding money issues and lack of space for three of them to work at home. It is difficult as they have to make calls and attend online meetings in connection with their work and have to work in separate rooms. He feels awful as his step-dad has to tiptoe about his own house. Their work stresses also become home stresses as they are all there together. This causes fall-outs between them and puts a strain on all of their relationships.

Mr Gunning confirmed that he is the co-owner of the Property and this came about quite recently because his step-dad needed to remortgage for financial reasons to do with his retirement and the mortgage had to be in their joint names as his step-dad was 70. The mortgage still has a few years to run. Mr Gunning was asked to respond to the Respondent's suggestion made at the CMD that their intention to move into the Property is not the genuine reason for the eviction proceedings being raised. Mr Gunning responded that this was strictly not true. Mr Gunning confirmed that, before moving into his girlfriend's flat, he lived with his parents. She only got the flat in order to live closer to him as their relationship developed. He stated that he progressively moved in with her over a period of time. He thinks that they first became aware of the damp in the flat a few months after his girlfriend's tenancy had started but did not consider it a big problem at that time. It was reported to the landlord and a roofer was sent out to do some work which it was hoped would resolve the problem. Mr Gunning was asked if he and his girlfriend had considered moving into the Property before Mr Duncan entered the tenancy agreement with the Respondent in May 2023. He said no, as their relationship was not yet at that stage and they were not yet aware how bad the damp issues were going to be. Mr Gunning confirmed that there were previous tenants in the Property, before the Respondent. Mr Gunning confirmed that they have kept the lease of the flat on so that they can give his parents some respite but intend to give it up as soon as they can. He confirmed it is a one-bedroom attic flat and that the photographs produced show damp in the bedroom, living room and bedroom, although there is some slight damp in the kitchen too. He said that the flat is tiny and that essentially every room is affected by damp. Mr Gunning confirmed that, although the landlord previously got a roofer out and the roofer said he had fixed part of the roof, this did not fix the damp. He thinks water is penetrating from different parts of the roof as this is an attic flat and confirmed that water still runs down the wall in one of the rooms.

19. Evidence of Applicant's witness – Ms Shannon Cochrane

Ms Shannon Cochrane stated her addresses as the same as Mr Gunning. She is employed as a social security case manager and works from home. She said that this is difficult in her present living circumstances as she deals with sensitive and confidential information and needs somewhere private at home to work. She stated that the flat she lives in with Mr Gunning is very small, damp and cold and has leaks into the one bedroom and living room. She reported this and the mould and damp problems to the landlord and gave photographs to the

landlord's letting agent in support. A roofer has been out and carried out some work but this did not fix the problems. The landlord does not seem to think that he needs to do anything more. Ms Cochrane referred to the photographs and videos of the damp patches and the moisture readings they took which were submitted to the Tribunal. She confirmed that she signed, together with Mr Gunning, the letter dated 29 October 2024 that was submitted to the Tribunal which lists all the photographs and videos and describes what they show. Ms Cochrane also confirmed that the letter dated 10 October 2024, also submitted to the Tribunal, was from her and explains the background circumstances and timeframe of events. Mr McTigue, again with the agreement of the Tribunal read through the letter which states as follows:-

"In May 2022 I moved from Dundee to Arbroath and took over the lease of the flat at 22B Jamieson Street, Arbroath. DD11 2AZ. Andrew and I had been seeing each other for a few months by this time and we were considering taking our relationship to the next stage hence my move to Arbroath.

As things progressed Andrew stayed over more and more and the longer term plan would be to live together. After staying a couple of nights at a time Andrew's asthma appeared worse so had to go back and forward to his parents where I would also go and stay. This got worse as we had to put heating on and around November/December 2022 we noticed damp stains appearing on the walls and the walls felt cold and damp to touch at which time I contacted the landlords Thyme Letting and Property Management and asked them to investigate and find a solution. I did make numerous telephone calls.

Early in 2023 Thyme Properties sent a roofer as they believed the problem was originating from there. I made numerous telephone calls but unfortunately didn't keep a log. I did at one point ask the roofer to look at the state of the walls inside the flat which were getting worse. On inspecting them he advised that this was not his problem and he only dealt with roofs. We had still believed at this point that the problem would be rectified.

By September/October 2023 things had become a lot worse with the plaster now falling off the walls exposing black mould. Despite make regular contact by telephone it had become apparent that Thyme would or could not deal with the problem and we would have to start looking for alternative accommodation.

At this point during discussions with Andrew's parents we decided the best course of action would be for us to live in the property owned by Andrew's parents, at 1 Robert Lindsay Place that is currently let out. Andrew's parents approached Wardhaugh their letting agent to see the options in giving notice to the current tenants to allow us to move in.

We believed that by early in the New Year of 2024 we would then be able to move into 1 Robert Lindsay Place.

The last year the flat has become increasingly damp and we have had to rely on Andrews's parents' allowing us to run back and forth to their home which is

causing a great deal of worry and stress for all of us. We did not look for anywhere else to live as that it would be a short term situation until we could move into Andrews's parent's property this has now been nearly a year and we know we will really struggle to go through another winter in this situation. Now due to the situation of the tenants not paying rent, Andrew is helping out with the mortgage payments so looking for somewhere more suitable is now totally unaffordable."

Ms Cochrane stated that, in addition to Mr Gunning's asthma, she feels unwell when she is staying at the flat too which she thinks is due to the cold and damp. She also explained that she suffers from a medical condition which makes it uncomfortable for her when living in Mr Gunning's parents' house, due to the lack of privacy. She stated that she and Mr Gunning have relied a lot on his parents but cannot continue to do so.

Ms Cochrane was asked to comment on the Respondent's suggestion that there is no genuine intention for she and Mr Gunning to move into the Property and live there and that there is a different reason for the eviction. She refuted this and reiterated that the current situation is impacting everyone's mental health. As it has not been possible for she and Mr Gunning to move into the Property, they are all overworked and overcrowded in their living arrangements and they have different lives and lifestyles which cause friction. Ms Cochrane stated that it is like the Covid pandemic situation all over again and that this has now been ongoing for a year. She confirmed that if they are able to move into the Property, it is the intention that she and Mr Gunning will pay rent to Mr Duncan and this will relieve some of the financial pressures on Mr Gunning's parents.

20. Summing-up

Mr McTigue confirmed that he was instructed later on in these proceedings. He asked for the eviction order sought to be granted. He stated that the Tribunal had heard evidence regarding the reasons behind the eviction and submitted that there is a valid ground for eviction that has been established, namely that the Applicant's son and his partner wish to live in the Property. The Applicant landlord does not own any other let properties. He submitted that the evidence of the three witnesses had been credible and reliable and establishes their clear intention as regards the Property. The Respondent has disputed the ground for eviction but has not produced any objective evidence in support of this. As to reasonableness, Mr McTigue referred to the current rent arrears, amounting to in excess of £19,000, and stated that no rent had been paid by the Respondent since notice was served in November 2023. The Respondent claimed that the rent arrears were due to other reasons but has not produced any credible or reliable evidence in support of this. The Respondent has not set out his position or done what he said he would do at the CMD.

21. The Tribunal adjourned to discuss and, on re-convening, the Legal Member confirmed that the Tribunal had decided to grant the eviction order sought and would issue a written Statement of Reasons Decision to parties. Mr McTigue and the Applicant were thanked for their attendance and the hearing concluded.

Findings in Fact

1. The Applicant is the landlord and joint-owner of the Property.
2. The Respondent is the tenant of the Property by virtue of a Private Residential Tenancy which commenced on 10 May 2023.
3. A Notice to Leave in proper form and giving the requisite period of notice was emailed to the Respondent on 6 November 2023.
4. The date specified in the Notice to Leave as the earliest date the eviction Application could be lodged with the Tribunal was specified as 5 December 2023.
5. The Tribunal Application was submitted on 6 December 2023.
6. The Respondent remains in occupation of the Property.
7. The Respondent attended the CMD and opposed the eviction but did not comply with the Tribunal's Direction issued thereafter and did not attend the Evidential Hearing.
8. The Applicant's step-son intends to reside in the Property as his long-term home, together with his partner, once vacant possession is obtained.
9. The current living arrangements of the Applicant's step-son and his partner, and of the Applicant and his wife, are unsatisfactory and impacting on them all negatively.
10. The rented property currently occupied by the Applicant's step-son and partner is a small one-bedroom attic flat, affected by water ingress, damp and mould.
11. The Applicant's step-son and partner stay at the Applicant's home several times per week due to conditions at their own rented property.
12. There is a lack of privacy and insufficient space at the Applicant's home to accommodate his wife, step-son and partner all working from home on a regular basis.
13. The Applicant's step-son and partner cannot currently afford to secure a suitable alternative property to live in.
14. The monthly rent in terms of the tenancy is £1,250.

15. The Respondent first fell into rent arrears in June 2023, the month after the tenancy commenced and then missed the two rent payments due for September and October 2023.
16. The last payment towards rent was made by the Respondent on 9 October 2023 and amounted to £750, at which point arrears amounted to £1,750.
17. Following service of the Notice to Leave on 6 November 2023, no further rent payments were made by the Respondent, nor attempts to resolve the arrears situation with the Applicant's letting agent.
18. The arrears amounted to £19,250 as at 1 December 2024 and now exceed that.
19. The Applicant is experiencing financial difficulties as a consequence of the rent arrears as there is still a mortgage and other regular outgoings payable in respect of the Property.
20. The Applicant is 70 years old and retired.
21. The Applicant's wife has now had to return to part-time work to assist with their financial situation.
22. The Applicant's step-son is also having to provide monthly financial assistance to the Applicant.
23. It is intended that the Applicant's son and partner will pay rent to the Applicant in respect of the Property when the Property is vacated and they move in.

Reasons for Decision

1. The Tribunal considered the Respondent's request for postponement of the Evidential Hearing, in terms of Rule 28 of the Procedure Rules which is as follows:-

"Adjournment or postponement of a hearing

28.—(1) The First-tier Tribunal at its discretion may, on its own initiative or on an application by a party, at any time, adjourn or postpone a hearing.

(2) Where a party applies for an adjournment or postponement of a hearing, that party must—

(a) if practicable, notify all other parties of the application for an adjournment or postponement;

(b) show good reason why an adjournment or postponement is necessary; and
(c) at the direction of the First-tier Tribunal] produce evidence of any fact or matter relied on in support of the application for an adjournment or postponement.

(3) The First-tier Tribunal may only adjourn or postpone a hearing at the request of a party on cause shown.

(4) If the reason for such an adjournment or postponement is to allow the party more time to produce evidence, the First-tier Tribunal may only adjourn or postpone the hearing if satisfied that—

(a) the evidence relates to a matter in dispute;

(b) it would be unjust to determine the case without permitting the party to produce the evidence; and

(c) where the party has failed to comply with directions for the production of the evidence, the party has provided a satisfactory explanation for that failure.”

The Respondent's request for postponement was submitted by email from Mr Mulholland, the day before the Evidential Hearing, stating that he was going into hospital for an operation on the day of the Evidential Hearing. He did not provide any supporting documentation, such as proof of the hospital appointment, either with his request or in response to the Tribunal's request for this, in terms of Rule 28(2)(c).

At the outset of the Evidential Hearing, the Tribunal considered the postponement request, given that neither of the Respondents were in attendance. The Tribunal considered the timing of the postponement request, the day before the Evidential Hearing, and the fact that the Respondent had been aware of the date of the Evidential Hearing since 5 December 2024; that the Respondent had not lodged any supporting documentation in respect of the postponement request; that the Respondent had not lodged any supporting evidence or complied with the Tribunal's Direction dated 19 September 2024, nor provided any explanation for this; that the Tribunal application had been ongoing since 6 December 2023; and that the Applicant, his witnesses and his legal representative were in attendance, fully prepared and ready to proceed. The Tribunal did not consider that the Respondent had shown cause for the postponement of the Evidential Hearing, as required in terms of Rule 28(3), nor that it would be in accordance with the Tribunal's overriding objective, in terms of Rule 2, to deal with the proceedings justly. The Tribunal accordingly refused the Respondent's postponement request and proceeded with the Evidential Hearing in the absence of the Respondent.

2. The Tribunal gave careful consideration to all of the background papers including the application and initial supporting documentation, the further documentary evidence produced in response to the Direction and thereafter, and the oral evidence given at the Evidential Hearing by the Applicant, Mr Gunning and Ms Cochrane.
3. The Tribunal found that the application was in order, that a Notice to Leave in proper form and giving the requisite period of notice had been served on the Respondent and that the application was made timeously to the Tribunal, all in terms of the tenancy agreement and the relevant provisions of the 2016 Act.
4. The Tribunal found the Applicant, Mr Gunning and Ms Cochrane to have given their evidence in a straightforward manner and to have fully answered all of the questions posed by the Tribunal Members. The Tribunal found their evidence credible and reliable and to be fully supported by the documentary evidence

and written representations lodged on behalf of the Applicant in advance of the hearing. The Tribunal believed that the Applicant's step-son and his partner genuinely intend to move into the Property as soon as possible and for it to be their future family home. The Tribunal was also satisfied that this was the wish of the Applicant and that he, Mr Gunning and Ms Cochrane had each fully explained the various reasons for this and also why there was no viable alternative.

5. Although neither of the Respondents attended the Evidential Hearing and had not produced any evidence supporting their position throughout the Tribunal process, the Tribunal did test the evidence of the Applicant and his witnesses by putting the Respondent's position to them, through questioning. The Tribunal fully considered Mr Mulholland's suggestion that the real reason behind the eviction was that the Respondent had fallen into rent arrears before Notice to Leave had been served. The Tribunal scrutinised the Statement of Rent arrears and the timeline of events but considered that, although there were already some rent arrears in existence when notice was served, they were satisfied, on the evidence, that the eviction ground stated in the Notice to Leave and being relied upon in respect of this application (ground 5) had been established by the Applicant.
6. The Tribunal considered the terms of Ground 5 of Schedule 3 to the 2016 Act, as amended) which are as follows:-

“Family member intends to live in property

5(1)It is an eviction ground that a member of the landlord's family intends to live in the let property.

(2)The First-tier Tribunal may find that the ground named by sub-paragraph (1) applies if—

(a)a member of the landlord's family intends to occupy the let property as that person's only or principal home for at least 3 months, and

(b)the Tribunal is satisfied that it is reasonable to issue an eviction order on account of that fact.

(3)A member of the landlord's family is to be regarded as having the intention mentioned in sub-paragraph (2) if—

(a)the family member is incapable of having, or expressing, that intention, and

(b)the landlord and (if different) a person entitled to make decisions about where the family member lives, intend that the family member will occupy the let property as the family member's only or principal home for at least 3 months.

(4) For the purposes of this paragraph, a person is a member of the landlord's family if the person is—

(a) in a qualifying relationship with the landlord,

(b) a qualifying relative of the landlord,

(c) a qualifying relative of a person who is in a qualifying relationship with the landlord, or

(d) in a qualifying relationship with a qualifying relative of the landlord.

(5) For the purposes of sub-paragraph (4)—

(a) two people are in a qualifying relationship with one another if they are—

(i) married to each other,

(ii) in a civil partnership with each other, or

(iii) living together as though they were married,

(b) “a qualifying relative” means a parent, grandparent, child, grandchild, brother or sister,

(c) a relationship of the half blood is to be regarded as a relationship of the whole blood,

(d) a person's stepchild is to be regarded as the person's child,

(e) a person (“A”) is to be regarded as the child of another person (“B”), if A is being or has been treated by B as B's child.

(6) In a case where two or more persons jointly are the landlord under a tenancy, references to the landlord in this paragraph are to any one of them.

(7) Evidence tending to show that a member of the landlord's family has the intention mentioned in sub-paragraph (2) includes (for example) an affidavit stating that the person has that intention.”

The Tribunal was satisfied that all elements of Ground 5 above were met in respect of this application.

7. The Tribunal was also satisfied that it was reasonable, having regard to all of the circumstances known to the Tribunal, to grant the eviction order sought. The Tribunal considered that the background circumstances regarding the Property, the personal and family circumstances of the Applicant and his stepson and girlfriend, and the current living conditions in both Ms Cochrane's rented flat and the Applicant's own home all added weight to the reasonableness considerations in favour of the Applicant. Although no medical

evidence was produced on behalf of the Applicant, the Tribunal was persuaded by the evidence of the Applicant and his witnesses that they had genuine physical and mental health concerns arising from the physical condition of the rented flat and also the lack of space and privacy in the Applicant's own home when they are all staying and working from home there. In the Tribunal's view, they each gave compelling oral evidence regarding the stresses they, and the Applicant's wife, were under and the strain it is putting on their relationships with one another. The Tribunal also considered the extremely high level of rent arrears and the length of time since any rent has been paid by the Respondent to be an important additional factor in favour of the Applicant in terms of reasonableness. The Respondent had been given an opportunity to provide evidence in support of their explanation for non-payment of rent, stated by Mr Mulholland at the CMD, but did not thereafter comply with the Tribunal's Direction following the CMD, lodge any documentary evidence nor attend the Evidential Hearing to give oral evidence on their own behalf. Nor had Mr Mulholland addressed the rent arrears issue following the CMD as he had said he would. In view of these failings, together with the Respondent's failure to engage with the Applicant's letting agent in respect of the arrears, the Tribunal considered it likely that the Respondent had simply decided not to pay any more rent after notice had been served, especially as Mr Mulholland had indicated at the CMD that he was having to save up for a deposit and rent for an alternative property, should they be evicted.

8. The Tribunal accordingly determined that an order for recovery of possession of the Property should be granted.
9. The Tribunal's decision in this matter was unanimous.

Right of Appeal

In terms of Section 46 of the Tribunal (Scotland) Act 2014, a party aggrieved by the decision of the Tribunal may appeal to the Upper Tribunal for Scotland on a point of law only. Before an appeal can be made to the Upper Tribunal, the party must first seek permission to appeal from the First-tier Tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them.

Nicola Weir

Legal Member/Chair

21 January 2025
Date